

P. O. Box 662
Rocky hill, NJ 08553
Phone: 609-883-0356 / 616-218-3212
Fax: 609-883-0192

206659
**Standard Terminal
Railroad of New
Jersey**

Fax

**To:** Mr. Vernon Williams**From:** Michael Allen

Surface Transportation Board

Fax: 202-565-9004**Date:** November 18, 2002**Phone:****Pages:** 32**Re:** Addendum to Request for Sta**CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments:

206659

**STANDARD TERMINAL RAILROAD
of NEW JERSEY, INCORPORATED**P.O. Box 462
Rocky Hill, NJ 08853Telephone 609-433-8386
Telecopier 609-433-8192

November 16, 2002

Mr. Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street NW
Washington DC 20423

ENTERED
Office of Proceedings Expedited copy via Telecopier 202-565-9004
and via Federal Express

NOV 18 2002

Part of
Public Record

Re: In the Matter of Morristown and Erie Railway Company
Authority to Operate the Somerset Terminal Railroad Corporation
Finance Docket No. FD-34267
Addendum to Request for a Stay of Proceedings

Dear Mr. Williams;

This letter is in follow-up to our Request for a Stay dated October 15, 2002 in the above captioned matter. All exhibits have been numbered as a continuation of those exhibits included in the original Request for a Stay

On Friday, October 25, 2002 the undersigned spoke with John Fiorilla, Esq., Counsel to the Morristown and Erie Railroad, at a meeting of the New Jersey Short Line Railroad Association. Mr. Fiorilla stated that he was aware of the litigation surrounding the property and that he would be filing an Amended Notice of Exemption within a week which would include the contracts between the Morristown and Erie and Somerset Terminal and clarify that the operating authority requested was conditional upon Somerset prevailing in the litigation. He further stated that I would be properly served with those documents. As of 5:30 PM today we have not received any such documents from Mr. Fiorilla.

On the morning of Friday, November 15, 2002 the undersigned spoke with Mr. Rudy St Louis (sic) of your office, who informed me that there had been no further filing by the Morristown and Erie and that the Board had not yet ruled on either the Notice of Exemption or the Request for a Stay. A search of the Board's public web site shows no decision being released as of the close of business on November 15, 2002.

On Friday, November 1, 2002, Somerset Terminal issued a Bill of Lading for the movement of a locomotive from the disputed property. It shows the locomotive as being shipped from the Morristown and Erie at Bridgewater Resources and routed via the Morristown and Erie to a connection with the Norfolk Southern at Royce, NJ. This Bill of Lading is attached as Exhibit G.

On Monday, November 4, 2002, Joseph Horner, the owner of the underlying real estate, received a letter dated October 14, 2002, signed by Eric Strohmeyer, President of the Somerset Terminal Railroad. It states that: 1) Somerset Terminal has a right-of-way across the property, this right-of-way being the subject of the dispute; 2) that the Morristown and Erie has placed the property on their insurance effective September 1, 2002; and, 3) that an inspection has been scheduled by the Morristown and Erie along with New Jersey Transit and the New Jersey

Michael E. Allen
Chief Operating Officer

mcallen@juno.com
wralienassoc@earthlink.net

**Standard Terminal Railroad of New Jersey
P.O. Box 662 Rocky Hill, NJ 08553**

Department of Transportation. We maintain that: 1) as the right-of way has not been awarded to Somerset terminal by the courts that Somerset Terminal does not in fact have a right-of-way across the property; 2) that no proof of insurance has been delivered to Mr. Horner or his representative; and, 3) Interviews conducted by the undersigned on Wednesday, November 6, 2002 with the cognizant officers at New Jersey Transit (Roz Diamond - by telephone) and the New Jersey Department of Transportation (Henry Schweber - in person) elicited the information that no such inspection had been undertaken or was contemplated. Mr. Strohmeyer further invited Mr. Horner to call him if he had any questions regarding the letter. Repeated attempts by the undersigned to call both numbers displayed on the letter are answered by a recording saying that the numbers have been disconnected. According to the United States Postal Service website, an item bearing the number 7002 2410 0003 7266 4545, the Certified Mail # on the top of the letter was accepted at 4:45 PM on October 31, 2002 in NEWARK, NJ 07102. There was no further information available for this item. A copy of his letter is attached as Exhibit H.

As we believe that representations of ownership in the original filing when coupled with the two documents referenced above indicate fraudulent intent in the conveyance to the Morristown and Erie the matter was referred to the Somerset, New Jersey office of the Federal Bureau of Investigation on Friday, November 15, 2002.

On November 16, 2002 the undersigned received a copy of a Memorandum of Law dated November 14, 2002 filed in the United States Bankruptcy Court for the District of New Jersey, in the matter of Bridgewater Resources, Debtor-in-Possession Case No. 00-60057(WHG) by John F McHugh, Esq. Counsel for Somerset Terminal. On page 1 of the memorandum Mr. McHugh states that the Order to Show Cause attached to the original Request for a Stay dated October 15, 2002 as Exhibit E -1 was scheduled for a hearing on October 24, 2002. This is seventeen days subsequent to the filing on October 7, 2002 of the original Notice by the Morristown and Erie. This shows that both Somerset and Somerset's counsel were fully aware at the time of the filing of the original Notice that any representations that Somerset either owned the bridge or possessed the easement were in fact fraudulent. On page 4 the memorandum states: "Somerset has entered into an agreement with the Morristown and Erie to assume Somerset's rights and obligations on the lands at issue. *That transfer has been approved by the Surface Transportation Board, Finance Docket 34267.*" (Emphasis added). This statement is contrary to the assertion of Mr. St Louis made on the day following the date on the Memorandum. A certification submitted as part of the same pleading and signed by Mr. McHugh on the same day under penalty of perjury and purporting to represent the facts of the matter does not address this issue. This Memorandum of Law and the Certification are being forwarded to the Federal Bureau of Investigation and copies have been attached as Exhibit I-1 and I-2 respectively.

On November 16, 2002 the undersigned also received a copy of a Sworn Statement signed by Eric Strohmeyer and dated November 13, 2002 which states in Paragraph 6 that "Somerset has entered into an agreement with the Morristown and Erie Railroad to provide common carrier rail service on the lines in issue and that *agreement has been approved by the Surface Transportation Board, Finance Docket 34267.*" (Emphasis added). This document was filed as part of the same pleading in the Bankruptcy Court. The undersigned further has probable cause to believe and does in fact believe that Mr. Strohmeyer's statement may constitute Perjury under the applicable statutes (18 USC 1621). A copy of this statement is also being forwarded to The Federal Bureau of Investigation and a copy has been attached as Exhibit J.

**Standard Terminal Railroad of New Jersey
P.O. Box 662 Rocky Hill, NJ 08553**

Standard again reserves the right to file objections to the granting of the Exemption, and again asks that all action on the instant Notice by the Morristown and Erie Railway be stayed pending action by the court; and further, that should the Board not stay its action in this matter, that the Exemption requested by the Morristown and Erie be denied due to the extensive misrepresentations on the part of Somerset.

Sincerely;
Standard Terminal Railroad
of New Jersey, Inc.



Michael E. Allen
Chief Operating Officer

Enclosures: 1. See attached exhibit list
2. 10 copies of the letter and exhibits

Copies of this letter and the exhibits have been served upon:

Richard Trenk, Esq. E-Mail and Regular Mail
Booker, Rabinowitz, Trenk, Lubetkin, Tully, DiPasquale, & Webster, PC
100 Executive Drive, Suite 100
West Orange, NJ 07062-8800
Counsel For Joseph Horner

John Fiorilla, Esq. Certified Mail
Watson, Stevens, Fiorilla, & Rutter, LLP
390 George Street, P.O. Box 1185
New Brunswick, NJ 08903
Counsel for the Morristown and Erie Railway

Somerset Terminal Railroad Corporation Certified Mail
568 Central Avenue
Bridgewater, NJ 08807

Jonathan M. Broder, Esq. Regular Mail
Conrail
2001 Market Street 16th Floor
Philadelphia, PA
19103

Mr. Vernon Williams
Surface Transportation Board

11/16/02
Page 3 of 4

**Standard Terminal Railroad of New Jersey
P.O. Box 662 Rocky Hill, NJ 08553**

November 16, 2002

**Re: In the Matter of Morristown and Erie Railway Company
Authority to Operate the Somerset Terminal Railroad Corporation
Finance Docket No. FD- 34267
Addendum to Request for a Stay of Proceedings**

Index to Exhibits

Exhibit G	Bill of Lading #02-02-1100
Exhibit H	Letter dated October 14, 2002
Exhibit I -1	Memorandum of Law, John F. McHugh, Esq. Dated November 14, 2002
Exhibit I -2	Certification of John F. McHugh, Esq. Dated November 14, 2002
Exhibit J	Statement of Eric Strohmeyer dated November 13, 2002

**Mr. Vernon Williams
Surface Transportation Board**

**11/16/02
Page 4 of 4**

1
2
3
4

EXHIBIT G

PAGE 82/82

Number # 02-02-1100

**Special Instructions: Deliver to Darnao Trucking at Sound Brook Yard,
Sound Brook NJ. Spot unit head out on east end of siding.**

SECRET//T, VVA 20:00 20/00/11

1
2
3
4

EXHIBIT H

**SOMERSET TERMINAL RAILROAD CORPORATION**

568 Central Avenue • Bridgewater, New Jersey, 08807

October 14, 2002

Sent via Fax (732) 271 - 2804 and Certified Mail # 7002 2410 0003 7266 4545

Mr. Joseph C. Horner
c/o Bridgewater Resources, Inc.
15 Polhemus Lane
Bridgewater, New Jersey 08807

Dear Mr. Horner,

Pursuant to our agreement between Somerset Terminal Railroad Corporation and yourself, we are hereby notifying you that we have reached an agreement with the Morristown and Erie Railway, Inc. of Morristown, NJ to operate over the Somerset Terminal Railroad right of way located upon your property.

Pursuant to the land use agreement dated May 1, 2000 and signed by you and I on or about December 17, 2000, we are formally requesting your consent to the assignment our rights and interests to the Morristown and Erie effective immediately.

Mr. Gordon R. Fuller, Executive Vice President of the Morristown and Erie Railway shall be contacting you soon with the details of his firm's operating plans. I do know that the M&E has already filed with the US Surface Transportation Board (FD-34267, October 4, 2002) and has placed all of the effected property on their insurance policies effective September 1, 2002. They have also notified all the appropriate parties at the connecting railroads regarding this transaction.

M&E officials, along with those from NJ Transit and, possibly, NJ DOT, are expecting to make an inspection of the property very soon, possibly even this week. They will be contacting you soon as to when they expect to be on the property.

Should you have any questions regarding this assignment, please feel free to give me a call. If, due to the ongoing litigation, you are unable to contact me directly, please have your attorney contact our attorney at the addresses provided below.

In closing, please be advised that Edward M. Fink is no longer with the Somerset Terminal Railroad organization. All correspondence regarding the railroad may be directed either to our counsel or myself.

We look forward to hearing from you, or your representative, in the not too distant future.

On behalf of the Somerset Terminal Railroad Corporation,

Yours truly,

Eric S. Strohmeier
President

Tel: (908) 927-0910 • Fax: (908) 927-0909



SOMERSET TERMINAL RAILROAD CORPORATION

568 Central Avenue • Bridgewater, New Jersey, 08807

Cc: *Of counsel for Somerset Terminal Railroad Corporation*
John F. McHugh
Attorney at Law
6 Water Street, Suite 401
New York, NY 10004
(212) 483-0875: Voice
(212) 483-0876: Fax

Gordon R. Fuller - Executive Vice President, COO
Morristown and Erie Railway, Inc.
49 Abbert Avenue
PO Box 2206
Morristown, NJ 07962-2206
(973) 267-4300: Voice
(973) 267-3138: Fax

Of counsel for Morristown and Erie Railway, Inc.
John K. Fiorilla
Watson, Stevens, Fiorilla & Rutter, LLP.
390 George Street
PO Box 1185
New Brunswick, NJ 08903
(732) 545-2250: Voice
(732) 214-0242: Fax

Enclosures

Tel: (908) 927-0910 • Fax: (908) 927-0909

1
2
3
4

EXHIBIT I - 1

W. Patrick Quast
164 Franklin Tpk.
Waldwick, N.J. 07463
201-444-5990

John F. McHugh
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875
pro hac vice

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In the Matter of:

BRIDGEWATER RESOURCES, INC.
a New Jersey corporation

Debtor-in-Possession

Defendant.

(Hon. William H. Ginden)

Chapter 11

Case No. 00-60057(WHG)

**SOMERSET TERMINAL RAILROAD'S REPLY MEMORANDUM OF LAW IN
SUPPORT OF REMAND TO THE SUPERIOR COURT OF THE STATE OF NEW
JERSEY, CHANCELLORY DIVISION, SOMERSET COUNTY**

FACTS

The removed action was filed by Somerset Terminal Railroad, Inc. (Somerset) against Joseph Horner (Horner) and Standard Terminal Railroad Of New Jersey (Standard) to nullify conveyances and contracts signed by Edward Fink (Fink) on behalf of the Somerset. The action was commenced by Order to Show Cause in the Chancery Court for Somerset County. The Order to Show Cause set the original date for a hearing for October 24, 2002. This action was removed by the defendants on

September 13, 2002 on the representation that the removed action is related to the bankruptcy before this Court. The only relationship appears to be that Horner, the title holder to the lands and bridge in issue, is the sole shareholder debtor corporation. None of the assets in question belong to the debtor and the debtor is not a signatory to or beneficiary of the conveyances. Somerset is a common carrier.

Plaintiff, in this state court action, has submitted admissions by Michael Allen, the President of the defendant Standard Terminal Railroad of New Jersey, that he indeed obtained the conveyance of the assets of Somerset by extortion. Under State Law a contract obtained by duress is absolutely voidable. Therefore, remand to the State Court will be followed by rescission of the deeds and contracts in issue expeditiously as no issue of fact remains for trial.

**REMAND IS PROPER AS
THE REMOVED ACTION CAN HAVE NO CONCEIVABLE EFFECT ON THE
BANKRUPTCY**

It is respectfully submitted that Horner's argument, that litigation concerning the common carrier authorized to provide rail service to the debtor's facility, is related to the bankruptcy is unworkable. If accepted, transactions such as the recent acquisition of Conrail, by Norfolk Southern and CSX Transportation would similarly be swept within any bankruptcy proceeding of any shipper on Conrail's many thousands of miles of track. That result would be absurd as is the argument made here by Horner.

Defendant Horner argues that if Somerset is successful in retaining the rail rights in issue that would somehow affect his ability to put forth a plan for reorganization. That statement can not be true as a matter of law. Somerset is a common carrier. It must

provide needed transportation services to all shippers on its line in a nondiscriminatory fashion 49 U.S.C. §11101, See: American Trucking Association v. The Atchafalaya Tonska and Santa Fe Railway Company, 387 U.S. 397, 406 (1967). Should Somerset fail to do so the debtor would have recourse to the Surface Transportation Board, 49 U.S.C. 10907 (c).

Horner's argument should be rejected for the additional reason that a litigation involving a non-debtor owner of an interest in a debtor which may effect the ability of such litigant to participate in a reorganization plan of the debtor has been specifically held not to provide the Bankruptcy Court with jurisdiction over such an action, In Re Johnnie T. Patton, Inc. 12 B.R. 470, 471 (D. Nevada 1981); In Re Aboussie Brothers Construction Co. v. United Missouri Bank, 8 B.R. 302, 303 (E.D. Mo. 1981). A possible adverse effect on the debtor due to an action against a partner in, or stockholder of, a debtor will not justify the Court's assuming jurisdiction over litigation which could effect the property of non debtor, Parkview Gem Inc. v. Stein 516 F. 2d 807, 811 (8th Cir. 1975).

Horner argues that Somerset is in breach of its contract with him in that it has failed to provide rail services as agreed. However he submits no facts in support of this statement. The Land Use Agreement submitted as Exhibit A to the Declaration of Eric Strohmeier, submitted herewith, belies the assertion. Horner's alleged counter claims also do not bring this unrelated action within the bankruptcy for the additional reason that jurisdiction over a rail carrier's failure to provide services needed by a shipper can not be adjudicated by this Court. Jurisdiction over such issues are within the exclusive jurisdiction of the Surface Transportation Board, 49 U.S.C §10501(d) and

§1132 and no proceeding has been commenced in that forum. However, the removed action involves solely title to lands obtained by extortion, not Somerset's common carrier obligations.

In an attempt to bootstrap this litigation into something relevant to the Bankruptcy proceeding, Horner alleges that Somerset was obligated under the agreements, to serve Bridgewater free of charge. That is incorrect, see Paragraph 3 of Declaration of John F. McHugh and Exhibit A to the Declaration of Eric Strohmeier. Somerset's sole obligations to debtor are those as a common carrier. Its obligations to Horner are 150,000 shares of stock in Eastern Railroad Management Corp.(which owns Somerset) which was issued and \$.32 per mile for every billable car moved.

Somerset has entered into an agreement with the Morristown and Erie Railroad to assume Somerset's rights and obligations on the lands in issue. That transfer has been approved by the Surface Transportation Board, Finance Docket 34267. The M&E is a rail carrier with numerous operations in New Jersey. M&E is fully capable of providing any service required by any operator of the facility which wishes to access rail services. As a common carrier, any entity acquiring the right to operate this trackage would have the obligation to serve Bridgewater, if a connection to that facility were provided. See 49 U.S.C. 10907(c)(1).

Horner relies upon In Re Marcus Hook Development Park, Inc 943 F. 2d. 261, 264 (3d Cir. 1991) for the proposition that a remote litigation between non parties could be swept into the bankruptcy Court if its resolution could "conceivably" effect the debtor's options. Horner claims that if Somerset retains control of the rail line, Bridgewater's reorganization plan can not work. Here, however, any such effect is

impossible as a matter of law. As stated above, Somerset, a common carrier, must provide service to Bridgewater at a fair price no matter who controls that facility See: American Trucking Association v. The Atchafalaya Topeka and Santa Fe Railway Company, supra. Therefore, the identity of the railroad providing transportation services on this line is irrelevant to the value of the debtor's estate or to any reorganization plan. The removed action can have no possible effect on the debtor's rights, freedom of action or on the handling of the estate, the effects required to confer jurisdiction in the Bankruptcy Court, See: Pacor v. Higgins, 743 F. 3d 984, (3rd Cir 1984) overruled on other grounds, Things Remembered Inc. v. Petrarca, 516 U.S. 124, 134-35 (1995).

Defendants' reliance upon the court's use of the term any "conceivable" is misplaced. The word originated in the decision of Pacor v. Higgins, supra. This year Third Circuit clarified its intent when it used that word, nullifying Defendant's argument here:

"(Defendant's): reading of the word 'conceivable' ignores the precise holding of Pacor where despite the seemingly broad language of the opinion, we found no 'related to' jurisdiction...because the outcome of that lawsuit could not result in 'even a contingent claim' against the debtor...rather, 'an entirely separate proceeding...' would be required. The test articulated in Pacor for whether a lawsuit could conceivably have an effect on the bankruptcy proceeding inquires whether the alleged related lawsuit would affect the bankruptcy proceeding without the intervention of yet another lawsuit."

In Re Federal-Mogul Global, 300 F.3d 368, 381 (3rd Cir. 2002).

Here the lawsuit removed from Somerset County could not affect the bankruptcy with or without yet another lawsuit.

CONCLUSION

For the reasons stated above and in Somerset's initial submissions this matter should be remanded to the Chancellor of Somerset County.

Dated, New York, N.Y.
November 14, 2002



John F. McHugh (McH1240)
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875

1

2

3

4

EXHIBIT I - 2

W. Patrick Quast
164 Franklin Tpk.,
Waldwick, N.J. 07463
201-444-5990

John F. McHugh
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0875
pro hac vice

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In the Matter of:

BRIDGEWATER RESOURCES, INC.
a New Jersey corporation

Debtor-in-Possession

(Hon. William H. Ginden)

Chapter 11

Case No. 00-60057(WHG)

Defendant

John F. McHugh declares under penalty of perjury as follows:

1. I am an attorney licensed to practice before the Courts of the State of New York, as well as the Federal Courts of the Second Circuit and the Sixth Circuit. I am appearing in this action with W. Patrick Quast who is licensed to practice in New Jersey and in the District of New Jersey. I am the attorney for Somerset Terminal Railroad, a common carrier authorized to operate by the Surface Transportation Board (Somerset), as such am familiar with the facts relevant to this motion.

2. The debtor is not a party to the dispute between Somerset, Joseph Horner (Horner) and Standard Terminal Railroad of New Jersey (Standard) owned by Michael Allen (Allen) who is a consultant for Bridgewater and a vice president of

Bridgewater Transportation Resources, Inc. and Horner's expert in the Bankruptcy proceeding (Deposition of Michael Allen, October 22, 2002, Pg 26 and 36). While registered as a corporation, Standard has not filed for authority to operate as a railroad with the Surface Transportation Board. Standard is also not operating any terminal or service in conjunction with a continuous carriage by a rail carrier. It is therefore not a carrier.

3. The removed action, which is the subject of this motion to remand, involves the conveyance by deed and contract of two parcels of land and a bridge between them on which railroad tracks are installed. The challenged conveyance was from Somerset to Horner. The debtor does not own any of the property in issue nor is it a party to any of the contracts in issue. The action involves no debt owed to the debtor. The allegation that Somerset is obligated to provide rail service to the debtor free of charge is untrue, See Land Use Agreement, Exhibit A to the declaration of Eric Strohmeier submitted herewith.

4. Somerset is a rail common carrier, has an obligation to provide transportation services to any customer on the line, including any operator of debtor's facility. That obligation can be enforced by the Surface Transportation Board.

5. The debtor's sole interest in the rail line is to obtain rail serviced to its facility at reasonable rates. The State Court action is not binding on the debtor as to any issue related to service to the Bridgewater facility by Somerset. Ownership of the railroad service rights and the easements in issue can have no effect on any reorganization plan. Somerset's legal obligations as a common carrier do not allow it to

discriminate between plan proponents. Further, Somerset has conveyed its rights and obligations to the Morristown and Erie Railroad, an experienced short line operator, fully capable of providing any level of service needed by any operator of the Bridgewater facility.

6. Any connection between the Somerset-Horner-Allen dispute and the debtor is therefore immaterial to any issue before this Court.

7. The State Court proceeding will be quick. There is no longer any issue of contested fact as to Somerset's right to nullify the conveyances at issue in the removed action.

8. The essential allegation of the complaint, that Horner obtained the transfer of the property from Somerset to him through extortion directed at Somerset's former president, Edward Fink by Mr. Allen, was fully admitted by Mr. Allen in deposition testimony given on October 22 and 24, 2002. Although the actual extortion directed at Mr. Allen is related on page 158 et seq. commencing at line 24, I recite Mr. Allen's testimony at length here to show that it is a full judicial admission as well as a statement made by Mr. Allen against his criminal interest. This testimony is not only admissible evidence it is binding and thus, conclusive against the defendants in the removed action. It establishes that Allen looked for dirt on Fink, an attorney, found it and used the threat of disciplinary action against him to extort the transfer of the lands in question to Horner. The quote commences at page 152 of the October 22 transcript:

1 Q. Where did you get the copy of the
2 disciplinary proceedings against Mr. Fink?
3 A. From the Clerk's Office at State
4 Supreme Court.

5 Q. What caused you to get those?

6 A. A suspicion.

7 Q. You were just suspicious of Mr. Fink?

8 A. Some of what he had said just didn't
9 feel right. I can't quantify it beyond that.

10 Q. Some of --

11 A. What Mr. Fink said to me. My personal
12 attorney had made the comment of, are you sure
13 this guy is not a retired tailor using his
14 brother-in-law's license. So I decided to see
15 whether there was a disciplinary record.

16 Q. What did Mr. Fink say to you that gave
17 you cause for suspicion?

18 A. He maintained that there was nothing
19 improper about backdating the deeds and backdating
20 the jurats.

21 Q. When did he make statements to that
22 effect to you?

23 A. He made that statement to me the first
24 time in, I believe it was, February of 2001 when I
25 actually sat down with the deeds and read them and
M. ALLEN - DIRECT, 153

1 asked him about that. He made the statement to me
2 again in October of 2001. Both times he told me
3 that Mr. Horner's attorney had agreed to it and
4 prior to my calling over to the disciplinary
5 committee. I spoke to the attorney at Mauro, Savo
6 who drafted the rider to the land use agreement to
7 ask him if he knew anything about that, and he had

8 no knowledge of any such agreement.

. . .

M. ALLEN - DIRECT, 165

3 Q. Why would the disciplinary authorities
4 tell you anything with respect to pending civil
5 proceedings when there were no pending civil
6 proceedings?

7 A. Okay. I'm not terribly conversant with
8 the rules of professional conduct. One of the
9 reasons I called them was to ask what the
10 procedures were and when one could properly file.
11 Since we were still contemplating civil
12 proceedings, I didn't proceed.

. . .

M. ALLEN - DIRECT, 156

14 Q. Were there any civil proceedings
15 threatened other than with respect to your pay?

16 A. My civil proceedings, as threatened,
17 were based on pay. The claims for consulting work
18 I had done for Eastern. And there was a question
19 concerning the stock issued by the company that
20 needed to be resolved. Separate from myself,
21 Mr. Doran had threatened civil action to get his
22 \$5,000 back; that was settled with a cash payment.

23 Q. What does the backdating of documents
24 relating to an easement have to do with any kind
25 of back pay owed to anyone?

M. ALLEN - DIRECT, 157

1 MR. KURTZMAN: I'm sorry. I didn't
2 hear him suggest that it did.

...

16 Q. So is it your testimony, Mr. Allen,
17 that the disciplinary board told you that if there
18 was any kind of civil litigation pending against
19 Eastern Terminal Railroad -- Eastern Railroad
20 Investment Corp. or Somerset Terminal Railroad,
21 regardless of the nature or underlying facts of
22 that litigation, that an ethics complaint against
23 Mr. Fink could not be brought until that
24 litigation was concluded?

25 A. The way it was explained to me by the

M. ALLEN - DIRECT, 158

1 attorney at the ethics committee was if there was
2 any relationship between the two actions they
3 would not deal with the ethics complaint until the
4 other action was resolved. He was not -- I did
5 not ask him for legal advice. I asked him what
6 the procedures were. He did not get a full
7 rendition of the problem.

...

M. ALLEN - DIRECT 158

12 Q. And at what point did you obtain the
13 documents that you gave to me in court on June
14 14th that you received from the ethics department?

15 A. I obtained those when I made the
16 initial inquiry in December.

17 Q. On the day you gave me those documents,
18 was Mr. Fink in court?

19 A. Yes, he was.

20 Q. Did you have a discussion with Mr. Fink
21 that day?

22 A. Yes, I did.

23 Q. What was that discussion about?

24 A. Mr. Fink had apparently overheard a
25 conversation between myself and Professor Shilton
M. ALLEN - DIRECT, 159

1 where Professor Shilton had asked me what
2 disciplinary action was going to happen and I told
3 him I didn't know because it couldn't happen until
4 this was over. Mr. Fink then came up to me in the
5 hallway and insisted on discussing what was going
6 to happen, or what I was going to do. He seemed
7 to be very, very afraid of a complaint being made
8 against him.

9 Q. What did you tell him?

10 A. That I wish things hadn't happened that
11 way, but that it was a problem he had to fix.

12 Q. Did you quote any legal statutes to
13 Mr. Fink?

14 A. I may have. I honestly don't recall.

15 Q. Did he say anything to the effect of
16 pleading for you to, quote unquote, "have some
17 heart"?

18 A. Yes, he did.

19 Q. Had you ever mentioned or raised the
20 issue of the backdating of documents to anyone at
21 Somerset Terminal Railroad previously?

22 A. I had discussed it. I believe I
23 already testified I had discussed that with
24 Mr. Fink twice previously, and both times he told
25 me it had been agreed to by Mr. Horner's lawyer.

M. ALLEN - DIRECT, 160

1 Q. And just to refresh my memory, did you
2 ever have those conversations while you were
3 president of Somerset Terminal Railroad?

4 A. Actually, they bracketed the period I
5 was president. One was while I was general
6 manager but not yet president. The other was
7 after I left.

8 Q. Did you attempt to do anything while
9 you were president to rectify the situation?

10 A. My belief was that if everything could
11 be made to work properly, it wouldn't be a
12 problem. I wasn't happy with it, but it wouldn't
13 be a problem.

14 Q. Have you ever asked Mr. Horner what he
15 thinks about it?

16 A. Mr. Horner told me that he took at face
17 value the statement by Mr. Fink that his lawyer
18 had agreed to this. He has since said that he
19 felt like he was stabbed in the back when he found
20 out his lawyer hadn't.

M. ALLEN - DIRECT, 163

7 Q. Did you ever intend to commence any
8 kind of disciplinary action or lodge any sort of
9 complaint, whether formally or informally, against
10 Mr. Fink?

11 A. At the time that I called the ethics
12 committee, yes, I did.

13 Q. Did you intend to do that in June,
14 2002?

15 A. My preference through this whole thing,
16 Mr. McGill, is if there is a solution that does
17 not involve litigation, an acceptable solution
18 that doesn't involve litigation in some form,
19 that's the route to take.

20 Q. A solution to recovering the pay that
21 you claim is owed to you?

22 A. Or at least undoing some of the damage.

23 Q. Okay. Damage to you personally?

24 A. Mr. McGill, I had taken Mr. Fink pretty
25 much on faith because he had retired, or so I

M. ALLEN - DIRECT, 164

1 believed at the time, from the division of Bell
2 Labs that was run by my godfather, which was
3 possibly the best recommendation anybody could
4 have. The fact that he took an action to undo a
5 mistake he made makes up for an awful lot. And he
6 did it knowing he would have some risk to himself
7 in doing it.

And continuing on October 24 at page 198:

15 Q. When were the generalities discussed,
16 in the year prior?

17 A. The generalities being, "Joe, you ought
18 to see if you can get them to return the property"
19 had been discussed over the year prior.

20 Q. In June of 2002, was it your intention
21 to go back to the Ethics Board with respect to
22 Mr. Fink once the reconveyance and the surrounding
23 transactions were concluded?

24 A. Mr. McGill, I think I made clear
25 before, and I apologize if I didn't, if the matter

Allen Direct, 189

1 could be resolved in a manner satisfactory to all
2 concerned, there is no reason to pursue further
3 actions either as a matter of general philosophy
4 or specifically in this.

(emphasis added pg. 159 lines 10-18). It is respectfully submitted that the above judicial admissions by Allen entitle Someract to Summary Judgment. Clearly Fink was under duress and Mr. Allen's statement that Fink, in signing the agreements, "...took an action to undo a mistake he made..." And he did it knowing he would have some risk to himself in doing it" (page 164 line 4-7 quoted above) establishes further that Allen was fully aware that Fink was indeed not authorized to sign those agreements and deeds.

9. In addition to agreeing to re-convey the properties in question, Mr. Fink also agreed that Someract owed Horner \$70,000. Mr. Eric Strohmeier, the current

president of Somerset, states that in its entire history Somerset had moved 18 cars. Somerset's railroad is 2/3 of a mile long. The agreement with Horner provides for a fee of \$0.32 per car mile as the sole cash consideration for the leasehold. A debt of \$70,000 is impossible. The recitation of that debt in the agreement in question here establishes that Fink was terrified by the threat of disciplinary proceedings and simply signed anything Horner put in front of him. Mr. Allen was questioned at length as to the particulars of that debt and never answered the question as to how the number \$70,000 was arrived at.

M. Allen Direct, 141

- 21 Q. If you would look at MA-10,
22 specifically page 3 of MA-10, do you see section 3
23 headed "compensation"?
24 A. Yes.
25 Q. What does section 3(a) provide, in

M. ALLEN - DIRECT

142

- 1 general terms?
2 A. "Somerset shall pay Horner on a
3 billable car mile basis for rail service operated
4 over his property at a car mile rate of 32 cents
5 per car mile".

M. Allen Direct, 143

- 3 Q. Okay. Let me just ask you this in an
4 effort to move on: Are you aware of any other
5 financial obligations which Somerset Terminal
6 Railroad may have had to Joe Horner that would not

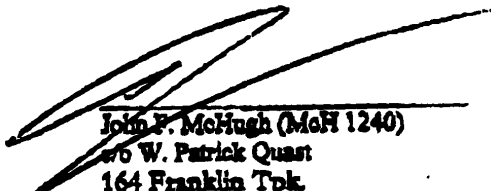
7 be set forth in MA-10 or the rider to which you
8 refer to?
9 A. No.

10. Obviously the agreement entered into by Mr. Fink had no relationship to the validity of any claim which Horner had against Somerset. It had everything to do with Allen's threat of disciplinary action against Fink if he did not sign whatever Horner wanted.

11. This action belongs in State Court which should dispose of the matter on the motion which was brought to that Court by Order To Show Cause, the submission and argument of which was delayed by the defendants' removal to this court.

Wherefore, this being a non core State Law claim between residents of the same state who are legally unrelated to the debtor, based upon an admitted State Law Crime the results of which can not effect the debtor, this proceeding should be remanded to the State Court and Somerset should be awarded its costs and attorney's fees, as, on this record removal was improper and indeed frivolous.

Dated, New York, N.Y.
November 14, 2002



John P. McHugh (McH 1240)
46 W. Patrick Quast
164 Franklin Tpk.
Waldwick, N.J. 07463

1
2
3
4

EXHIBIT J

W. Patrick Quast
164 Franklin Tpk.,
Waldwick, N.J. 07463,
201-444-3990

John F. McHugh
6 Water Street, Suite 401
New York, N.Y. 10004
212-483-0873
pro hac vice

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In the Matter of

BRIDGEWATER RESOURCES, INC.
a New Jersey corporation

Debtor-in-Possession

Defendant.

(Hon. William H. Ginden)

Chapter 11

Case No. 00-60057(WHG)

Eric Strohmeyer declares under penalty of perjury as follows:

1. I am the acting president of Somerset Terminal Railroad and as such am familiar with the facts.

2. The rail line in dispute in the removed action is 2/3 mile long.

Somerset Terminal Railroad has handled a total of 18 cars to date.

3. Somerset did not agree to handle cars for Bridgewater for free. The entirety of Somerset's obligations under its agreement with Mr. Horner is included in the Land Use Agreement, Exhibit A hereto. In that agreement Somerset is required to issue 150,000 shares of stock in Eastern Railroad Management Corp. to Mr. Horner and to pay

Horner \$0.32 per revenue car mile. The stock was issued. If Somerset has any debt to Horner it is for \$5.76.

4. Somerset has never received a demand for service from the debtor, Bridgewater Resources, Inc.

5. The rail line in issue does not reach the Bridgewater facility. About 1,500 feet of track must be laid to directly serve the facility.

6. Somerset has entered into an agreement with the Morristown and Erie Railroad to provide common carrier rail services on the lines in issue and that agreement has been approved by the Surface Transportation Board, Finance Docket 34267.

Dated, Bridgewater, N.J.
November 13, 2002


Eric Strohmeyer